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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Local Competition and Broadband) CC Docket No. 99-301
Reporting)
)

**REPLY COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")¹ hereby respectfully submits its comments in response to the initial comments in the above-captioned proceeding.²

As noted in our initial comments, PCIA supports the Commission's initiative to gather information regarding the status of local telephone service competition and the deployment of "advanced telecommunications capability."³ However, PCIA believes that the information sought by the Commission can be garnered without burdening the entire wireless and nascent broadband industries. After reviewing all of the comments, PCIA still believes that a well-coordinated, well-publicized campaign to make carriers aware of

¹ PCIA is an international trade association established to represent the interests of both the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

² In the Matter of Local Competition and Broadband Reporting, Notice of Proposed Rulemaking, CC Docket No. 99-301, (Oct. 7, 1999) ("Notice").

³ See Comments of the Personal Communications Industry Association, Dec. 3, 1999.

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the FCC's need for this information – and permitting them to file on a voluntary basis – would be much more successful than the Commission's past efforts. The Commission could couple this voluntary effort with selected mandatory surveys in order to provide it with a better overall picture of local competition and broadband deployment.

Nevertheless, if the FCC chooses to move forward with its mandatory initiative, the Commission must ensure that this reporting requirement is simple, unobtrusive, and short-lived. Along with the overwhelming majority of the commenters, PCIA also strongly urges the Commission to reverse its initial proposal and adopt rules that ensure that any information provided remains confidential and cannot be linked to individual wireless carriers.

I. THE COMMISSION SHOULD RE-EVALUATE THE THRESHOLD LEVELS FOR MANDATORY COMPLIANCE AND ENSURE THAT WIRELESS CARRIERS DO NOT FACE DUPLICATIVE REQUESTS FOR DATA

PCIA believes that limiting the data collection to carriers with 50,000 or more local access lines or channels nationwide or 50,000 or more subscribers nationwide will provide the Commission with a solid statistical overview of the state of local competition. However, PCIA opposes the Commission's proposal to require entities that provide at least 1,000 full broadband service lines (or wireless channels) or have at least 1,000 full broadband subscribers, to complete all relevant portions of the survey. PCIA has serious reservations about the obvious discrepancy between a 50,000 line threshold for the wireline community and the 1,000 subscriber threshold for full broadband providers.

Consistent with the proposed requirement for the wireline community, the Commission should modify its proposal to require data from entities that provide at least 50,000 full broadband service lines (or wireless channels) or have at least 50,000 full broadband subscribers nationwide. At the very least, the Commission should consider the National Cable Television Association's recommendation that companies with fewer than 5,000 broadband customers nationally be exempted from mandatory reporting requirements.⁴ PCIA would also support NCTA's proposal that full broadband providers be required to report the number of broadband customers on an individual state basis when the threshold of 1,000 subscribers is exceeded in that state.⁵ In that regard, like OPASTCO, PCIA also believes that the Commission should create a shortened form for broadband providers.⁶ Such exemptions and modifications would inherently recognize that companies with this minimal level of broadband penetration are least likely to have the resources and personnel to meet the reporting requirements. Moreover, these companies, most of whom are in their infancy, should not face greater reporting burdens than monopoly telephone companies. In fact, AT&T explains that this data collection, as proposed, will pose a significant burden on even large, established firms.⁷

PCIA is also concerned that these reporting obligations are just the beginning. Many wireline commenters indicate that they currently provide similar data to the

⁴ Comments of NCTA at 7.

⁵ Comments of NCTA at 8.

⁶ Comments of OPASTCO at 6.

⁷ Comments of AT&T at 7.

Commission⁸ or to the states.⁹ PCIA's member carriers cannot afford to spend additional time filling out a variety of state and federal government forms that request duplicative information. If the Commission ultimately adopts a mandatory data collection program, it should strongly encourage the states to use the results of this program rather than adopting or continuing their own reporting initiatives. As noted by Frontier Corporation, "[h]aving numerous and overlapping reporting mandates based solely upon jurisdictional differences serves no useful purpose and simply increases the burdens and costs imposed upon reporting carriers."¹⁰

I. THE COMMISSION SHOULD COLLECT DATA ON A STATE-SPECIFIC BASIS AND NO MORE OFTEN THAN ANNUALLY

The majority of commenters agree with PCIA that the Commission should collect this data on a state-by-state basis and no more often than annually.¹¹ Like these commenters, PCIA opposes any attempt by the Commission to require carriers to file reports for a smaller geographic region.¹²

⁸ See e.g., Comments of Omnipoint at 7; Comments of MediaOne at 4; Comments of Bell Atlantic Mobile at 3.

⁹ See e.g., Comments of AT&T at 5, n.7; Comments of NEXTLINK Communications, Inc. at 4-5; Comments of Prism Communications Services, Inc. at 3; Comments of MediaOne at 4-7.

¹⁰ Comments of Frontier Corporation at 4-5.

¹¹ See e.g., Comments of USTA at 1-3; Comments of GTE at 10-11; Comments of AT&T Corporation at 12-14; Comments of the NCTA at 6-7; Comments ALTS at 5-6; Comments of Sprint at 2.

¹² PCIA concurs with ALTS that collecting information on a state-by-state basis is more likely to result in the federal collection of information satisfying the needs of the states and will result in less duplication of efforts between the states and the Commission. See Comments of ALTS at 7. In addition, AT&T notes that LATA-based advanced services data would present unique reporting challenges because LATAs are inconsistent with the corporate structure of many reporting entities. See Comments of AT&T at 12.

PCIA also opposes any attempt by the Commission to require carriers to file reports more often than annually. As noted by USTA, “[t]here is clearly no regulatory or public policy reason to burden carriers providing data on the scope of narrowband, wireless and broadband competition with more frequent reporting obligations.”¹³ If the Commission were to require such data on a more frequent basis, carrier resources would be drained with no significant benefit to the Commission.

II. THE FCC MUST KEEP ALL DATA SUBMITTED BY WIRELESS CARRIERS CONFIDENTIAL

Almost all commenters vehemently oppose the Commission’s tentative conclusion to make information submitted pursuant to this information collection publicly available.¹⁴ The Commission should, consistent with its general policy of protecting proprietary information, keep carrier-specific data confidential. Disclosure of individual carrier reports is not necessary to assess the status of local competition or the degree of broadband deployment. PCIA believes that only aggregated data, by industry segment, should be made public. In addition, rather than requiring each submitter to request confidentiality, the Commission should, by rule, impose confidentiality as it has done for other reporting obligations or modify Form 477 to permit companies to “check off” a box requesting confidentiality.

¹³ Comments of USTA at 2.

¹⁴ See e.g., Comments of Omnipoint Communications at 2-7; Comments of Nextel Communications at 3-5; Comments of Bell Atlantic Mobile, Inc. at 5-8; Comments of ALTS at 11-12; Comments of Sprint Corporation at 3; Comments of the CTIA at 5-7; Comments of the NCTA at 11-12; Comments of AT&T at 17-20.

The danger of company specific public disclosure of this proprietary data is evidenced by the comments of SBC and Bell Atlantic.¹⁵ These large entities are in a position to use this data to target their pricing and equipment rollouts against start-up competitors. The FCC should not allow large competitors to use the Commission's data collection process as a means of targeting the very companies that it hopes to nurture. Failing to protect this information from disclosure could also harm the public by allowing competitors to copy initiatives of other entrepreneurial companies.

PCIA agrees with AT&T that "[t]here is little information that is guarded more closely by a newly-developing competitor, especially when facing an entrenched monopolist, than its subscriber or access line counts."¹⁶ Detailed information such as subscribership levels, deployment schedules, marketing plans, and rate of growth, could be used by rival incumbents against smaller carriers to obtain an advantageous market position.¹⁷ As Nextel explains, public disclosure of such information "...would expose carriers' business strategies to their competitors and [could] potentially interfere with the competitive functioning of the marketplace."¹⁸ Moreover, as noted by OPASTCO, "...non-confidential treatment of proprietary information would undercut the desire of Congress to assure the ability of small carriers to compete against large providers."¹⁹ Carriers simply cannot afford to have such sensitive information in the hands of their fierce competitors. As AT&T notes, disclosure of carrier-specific data is contrary to the

¹⁵ Comments of SBC at 1-4; Comments of Bell Atlantic at 1-4.

¹⁶ Comments of AT&T Corporation at 17.

¹⁷ Comments of Omnipoint at 4.

¹⁸ Comments of Nextel Communications, Inc. at 4.

¹⁹ Comments of OPASTCO at 7-8.

Commission's general policy favoring confidential treatment of business data except in extraordinary circumstances.²⁰

III. THE FCC SHOULD NOT REQUIRE SERVICE PROVIDERS TO MODIFY THEIR BUSINESS PRACTICES IN ORDER TO REPORT DATA

A. PCIA Opposes the FCC's Proposal to Require Broadband Carriers to Separate Residential and Business Customers

Several commenters agree with PCIA that there is little justification for burdening the nascent broadband industry by requiring carriers to breakdown subscribers into detailed subcategories.²¹ This distinction simply has no regulatory relevance in the evolving broadband industry, nor is it tracked by the carriers in this fashion. Moreover, the Commission is not statutorily obligated to differentiate the data under Section 706 of the 1996 Act.²² The Commission's proposal would require wireless broadband carriers to collect data that has no commercial benefit or regulatory relevance and pay for the software upgrades and data collection/entry requirements that would be necessary to change the way in which customer records are kept. This is a paperwork burden that the broadband industry should not be made to bear for the general data wishes of a government agency.

²⁰ "Permitting disclosure...runs contrary to the Commission's stated policy of not authorizing the disclosure of confidential information "on the mere chance that it might be helpful, but... upon a showing that the information is a necessary link in a chain of evidence that will resolve an issue before the Commission. See Comments of AT&T at 19 citing *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶8 (1998).

²¹ See e.g., Comments of NCTA at 9; Comments of Northpoint Communications, Inc. at 4; Comments of AT&T at 6-7.

²² See 47 U.S.C. § 706.

B. PCIA Supports the FCC's Proposal to Limit the Reporting Categories for Mobile Wireless Carriers

PCIA supports the Commission's proposal to require mobile wireless carriers to provide data that identifies and separates cellular, PCS, and other wireless mobile telephony subscribers. This breakout is generally consistent with the record keeping practices of mobile wireless operators. In this regard, geographic subscriber counts could be based on the billing record addresses of wireless consumers. However, as Omnipoint observes, such a methodology would not work well for prepaid customers.²³ The only reasonable method of tracking prepaid subscribers would be to use assigned telephone numbers. Unfortunately, this methodology would be extremely burdensome and would likely not yield accurate information since mobile subscribers' phone numbers do not necessarily correlate with their local calling areas.²⁴

IV. THE DATA COLLECTION OBLIGATION SHOULD, AT A MINIMUM, BE REVIEWED BIENNIALY

Other commenters support PCIA that the Commission should review the data collection requirement after two years.²⁵ Reviewing this reporting requirement on a bi-annual basis is consistent with the Commission's Section 11 statutory obligation to promote regulatory reform by reviewing its rules every two years.²⁶ The Commission

²³ See Comments of Omnipoint Communications, Inc. at 7, n.6.

²⁴ For example, many wireless consumers in the District of Columbia metropolitan area choose a (202) area code as their wireless phone number to avoid the intra- and interstate toll charges that come with some of the region's other area codes.

²⁵ See *e.g.*, Comments of USTA at 7; Comments of US West Communications, Inc. at 6-7.

²⁶ 47 U.S.C. § 161. Section 11 of the Act requires the Commission in every even numbered year to review all regulations to determine "whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such service" and to "repeal or modify any regulation it determines to be no longer necessary in the public interest."

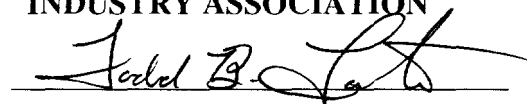
must likewise apply this standard to this and other data collection initiatives. During these reviews, the Commission should, at a minimum, re-visit the size of the carriers subject to the reporting requirement in order to relieve impositions on small wireless businesses. If the Commission fails to review the reporting requirement as required by the Act, the obligation should sunset.²⁷

V. CONCLUSION

PCIA urges the Commission to adopt a voluntary reporting mechanism that is coupled with selective mandatory surveys. The Commission must ensure that any information remains confidential and that publicly released data cannot be linked back to an individual carrier. Finally, the Commission should review the data collection obligation every two years to ensure that the program does not outlive its usefulness.

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²⁷ See e.g., Comments of GTE at 2-3 Comments of USTA at 7; Comments of US West Communications, Inc. at 1-2.

CERTIFICATE OF SERVICE

I, Taube Pecullan, do hereby certify that on the 20th day of December 1999, a copy of the foregoing Reply Comments of the Personal Communications Industry Association was delivered to each of the following persons:

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